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In this chapter. . .

This chapter discusses two informal procedures that a law enforcement agency or the Family Division may use when a juvenile is apprehended for an offense or a complaint or petition is presented to the court but custody is not requested. The procedures discussed in this chapter do not involve removal of a juvenile from parental custody. The informal procedures discussed in this chapter are diversion and the consent calendar. A law enforcement officer or the Family Division may divert a juvenile from formal court procedures and refer him or her to a public or private agency. In addition, with the consent of the juvenile and his or her parent, guardian, or legal custodian, the Family Division may place a case on its consent calendar. Use of these informal procedures is subject to restrictions imposed by the Crime Victim's Rights Act and the Juvenile Diversion Act, and those restrictions are discussed in this chapter.

Another informal procedure involves adjourning the case and, if no new petitions are filed against the juvenile, dismissing the case. The requirements for adjourning a case are discussed in Section 7.11. The Family Division may also take a plea under advisement in a juvenile delinquency case. This procedure is discussed in Section 8.7.

Note on court rules. On February 4, 2003, the Michigan Supreme Court approved extensive amendments to Subchapter 5.900 of the Michigan Court Rules, which govern delinquency, minor PPO, designated case, and "traditional waiver"

proceedings, and to Subchapter 6.900, which govern “automatic waiver” proceedings. Subchapter 5.900 was renumbered Subchapter 3.900. These rule amendments are effective May 1, 2003. Although not in effect on the publication date of this benchbook, the rule amendments have been included here. For the rules in effect prior to May 1, 2003, see the first edition of this benchbook, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJJ, 1998).

4.1 Family Division Options When a Complaint or Petition Is Filed

*See Section 4.3, below.

Under the Juvenile Code and related court rules, the Family Division of Circuit Court has several procedural options when a petition (including a citation or appearance ticket for non-felony offenses) or complaint is filed in a delinquency proceeding. Subject to procedural requirements imposed under the Crime Victim’s Rights Act,* MCR 3.932(A)(1)–(5) (preliminary inquiries) and MCR 3.935(B)(3) (preliminary hearings) allow a court to choose one of the following procedural avenues that will best serve the interests of the juvenile and the public:

*See Section 4.4, below.

- deny authorization of the petition or dismiss the petition;
- before authorizing the petition, refer the matter to a public or private agency pursuant to the Juvenile Diversion Act;*
- direct that the parent, guardian, or legal custodian and juvenile appear so that the matter can be handled through further informal inquiry;
- without authorizing the filing of the petition, proceed on the consent calendar;* or
- after authorizing the filing of the petition, proceed on the formal calendar.*

*See Section 4.5, below.

*See Section 4.6, below.

4.2 Preliminary Inquiries

MCR 3.903(A)(22) defines “preliminary inquiry” as an informal review by the court to determine appropriate action on a petition. Preliminary inquiries may be based on complaints signed and submitted by parents of a juvenile, school officials, or police officers, rather than on petitions signed and filed by the prosecuting attorney. A wide variety of practices exist among courts as to the use of preliminary inquiries. Courts may not accept complaints from citizens or may utilize preliminary inquiries exclusively for less serious criminal offenses where no formal court jurisdiction will be requested or for cases in which the juvenile does not contest the charges.

MCL 712A.11(1) provides the court with authority to conduct a preliminary inquiry when a person gives information to the court that a juvenile is a “status offender” or “wayward minor.”* That provision states as follows:

“Except as provided in subsection (2), if a person gives information to the court that a juvenile is within [MCL 712A.2(a)(2)–(6) (status offenses) or (d) (“wayward minor” provision)], a preliminary inquiry may be made to determine whether the interests of the public or the juvenile require that further action be taken. If the court determines that formal jurisdiction should be acquired, the court shall authorize a petition to be filed.”

MCL 712A.11(2) provides that only a prosecuting attorney may file a petition with the court when a violation of a criminal law or ordinance is alleged.

Authority for the Family Division to conduct a preliminary inquiry when a status offense, violation of the “wayward minor” provision, or criminal violation is alleged is contained in MCR 3.932(A). This court rule provides that when a petition is not accompanied by a request for detention* of the juvenile, the court may conduct a preliminary inquiry. At a preliminary inquiry, the court examines the best interest of the juvenile and public to determine whether further action is required, or whether the case may be treated informally or formally. *Id.*

The court may assign a referee to conduct a preliminary inquiry. MCR 3.913(A)(1). MCR 3.913(A)(2) and MCL 712A.10 do not require referees who conduct preliminary inquiries to be licensed attorneys.

Because a preliminary inquiry is not a hearing or proceeding on the formal calendar, no record of a preliminary inquiry is required to be made. MCR 3.925(B). There is no requirement that the judge or referee take testimony or examine evidence. The judge or referee is merely required to examine the petition and make his or her determination in accordance with MCR 3.932(A).

However, a preliminary inquiry must be conducted on the record if an offense enumerated in MCL 780.786b(1) of the Crime Victim’s Rights Act is alleged. MCR 3.932(A).

4.3 Requirements of the Crime Victim’s Rights Act

Crime victims’ rights to be treated with fairness and respect for their dignity, and to confer with the prosecuting attorney, are preserved by the Michigan Constitution. Const 1963, art 1, § 24, states in relevant part:

*See Sections 2.3 (definition of “status offender”) and 2.4 (definition of “wayward minor”).

*If detention is requested, the court must conduct a preliminary hearing. See Chapter 5.

“(1) Crime victims, as defined by law, shall have the following rights, as provided by law:

“The right to be treated with fairness and respect for their dignity . . . throughout the criminal justice process.

. . . .

“The right to confer with the prosecution.”

A. Definition of “Victim”

The definition of “victim” in the Crime Victim’s Rights Act (CVRA) includes persons who suffered direct or threatened harm from the offense, relatives of deceased victims, and persons who may exercise the rights of incapacitated victims. MCL 780.781(1)(i) defines “victim” to include the following individuals or entities:

*“Person” includes both individuals and business or governmental entities.

- A person* who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of an enumerated offense.
- If the victim is deceased, one of the following (other than the juvenile offender) in descending order of priority:
 - the spouse of the deceased victim (if any),
 - a child of the deceased victim if the child is 18 years old or older (if any),
 - a parent of the deceased victim (if any),
 - the guardian or custodian of a child of the deceased victim if the child is less than 18 years of age (if any),
 - a sibling of the deceased victim (if any),
 - a grandparent of the deceased victim (if any).
- A parent, guardian, or custodian of a victim who is less than 18 years old if the parent, guardian, or custodian so chooses and is neither the defendant nor incarcerated.
- A parent, guardian, or custodian of a victim who is mentally or emotionally unable to participate in the legal process if the parent, guardian, or custodian is neither the defendant nor incarcerated.

Under MCL 780.781(2), if the primary victim “is physically or emotionally unable to exercise the privileges and rights under [the CVRA],” the victim

may designate one of the following persons “to act in his or her place while the physical or emotional disability continues”:

- the victim’s spouse;
- a child of the victim who is 18 years of age or older;
- the victim’s parent, sibling, or grandparent; or
- any other person who is at least 18 years old and who is neither the defendant nor incarcerated.*

*This includes
“victim-witness
assistants.”

The primary victim must tell the prosecuting attorney who is to act in the primary victim’s place, and notices required under the CVRA must still be sent only to the primary victim. *Id.*

What constitutes “direct or threatened” harm depends upon the facts of the case. The general definition of “victim” contained in the CVRA includes persons who suffer “direct or threatened physical, financial, or emotional harm” as a result of an offense. No Michigan case has determined how direct the harm or threat must be for the person to qualify as a victim under this definition. See, however, *People v Day*, 169 Mich App 516, 517 (1988) (victims are not limited to “those from whom the defendant takes property”; therefore, each person in a bank during a robbery constitutes a victim), and MCL 780.794(4)(d) (a court must order restitution for the cost of psychological services incurred by a victim).

Individuals charged with offenses arising out of the same transaction as the charge against the juvenile arose do not qualify as “victims.” The definition of “victim” excludes individuals charged with offenses arising out of the same transaction as the charge against the juvenile. MCL 780.781(3).

B. The Court Must “Accept” Certain Petitions

A provision of the CVRA requires the court to “accept” a petition if it alleges that the juvenile has committed a criminal offense that falls under Article 2 of the CVRA. MCL 780.786(1) states as follows:

“The court shall accept a petition submitted by a prosecuting attorney that seeks to invoke the court’s jurisdiction for a juvenile offense, unless the court finds on the record that the petitioner’s allegations are insufficient to support a claim of jurisdiction under section 2(a)(1) of [the Juvenile Code].”

Section 2(a)(1) of the Juvenile Code, MCL 712A.2(a)(1), gives the court jurisdiction over juveniles charged with offenses that are criminal offenses when committed by adults. Thus, if a petition is well-pleaded and contains sufficient allegations that if proven at a trial would bring a juvenile within

the court's jurisdiction over criminal offenses, and if that offense is a "juvenile offense" under the CVRA, MCL 780.786(1) requires the court to "accept" the petition. "Accept" does not mean "authorize the petition for filing." See MCR 3.903(A)(20) (a petition is "authorized for filing" when the court gives written permission to file the petition).

Although the court must "accept" a well-pleaded petition alleging a juvenile offense, the court retains discretion to utilize informal or formal procedures in a juvenile delinquency case. Although juvenile delinquency proceedings are not criminal proceedings, MCL 712A.1(2), the Court of Appeals has stated that "the procedures for invoking juvenile court jurisdiction in cases where a child is alleged to have committed a criminal act are closely analogous to the adversary criminal process." *In the Matter of Sylvester Wilson*, 113 Mich App 113, 121 (1982). Under MCL 712A.11(2), only the prosecuting attorney may file a petition alleging that a juvenile has committed a criminal offense. Nonetheless, that statutory provision also assigns to the court the authority to determine whether to authorize a petition and utilize formal procedures to handle a juvenile delinquency case. See also *Oklahoma v Juvenile Division, Tulsa County District Court*, 560 P2d 974, 975–76 (Okla Crim App, 1977) (the intake function is neither wholly judicial nor wholly prosecutorial in nature, and the Legislature could properly assign the function to the judiciary which is better trained to balance the interests of society and the child).

C. Offenses to Which the CVRA Applies

For purposes of ordering restitution, "offense" means any criminal offense. MCL 780.794(1)(a). For purposes other than ordering restitution, the CVRA applies to an "offense" committed by a juvenile. An "offense" is one of the following:

- an offense punishable by imprisonment for more than one year, or an offense expressly designated by law as a felony, or
- a "serious misdemeanor." MCL 780.781(1)(f).

Serious misdemeanors are:

- assault and battery, MCL 750.81;
- aggravated assault, MCL 750.81a;
- illegal entry, MCL 750.115;
- fourth-degree child abuse, MCL 750.136b;
- enticing a child for an immoral purpose, MCL 750.145a;
- discharge of a firearm intentionally aimed at a person, MCL 750.234;

- discharge of a firearm intentionally aimed at a person resulting in injury, MCL 750.235;
- indecent exposure, MCL 750.335a;
- stalking, MCL 750.411h;
- leaving the scene of a personal-injury accident, MCL 257.617a, if the offense results in damage to another individual's property or physical injury or death to another individual;
- operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, MCL 257.625, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual;
- selling or furnishing alcoholic liquor to an individual less than 21 years of age, MCL 436.1701, if the violation results in physical injury or death to any individual;
- operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, MCL 324.80176(1) or (3), if the violation involves an accident resulting in damage to another individual's property or physical injury or death to any individual;
- a violation of a local ordinance substantially corresponding to a violation listed above; and
- a charged felony or serious misdemeanor that is subsequently reduced or pled to a misdemeanor.

D. Required Procedures Before Removing a Case From the Adjudicative Process

If a felony or "serious misdemeanor" is alleged, MCR 3.932(B) requires the court to follow procedures set forth in the CVRA before removing a case from the adjudicative process. This rule states as follows:

"(B) Offenses Listed in the Crime Victim's Rights Act. A case involving the alleged commission of an offense listed in the Crime Victim's Rights Act, MCL 780.781(1)(f), may only be removed from the adjudicative process upon compliance with the procedures set forth in that act. See MCL 780.786b."

The CVRA requires the court to notify the prosecuting attorney and, in some cases, conduct a hearing before utilizing informal procedures that remove the case from the adjudicative process. MCL 780.786b(1) states as follows:

“Except for a dismissal based upon a judicial finding on the record that the petition and the facts supporting it are insufficient to support a claim of jurisdiction under section 2(a)(1) of [the Juvenile Code], a case involving the alleged commission of [a juvenile offense] . . . shall not be diverted, placed on the consent calendar, or made subject to any other prepetition or preadjudication procedure that removes the case from the adjudicative process unless the court gives written notice to the prosecuting attorney of the court’s intent to remove the case from the adjudicative process and allows the prosecuting attorney the opportunity to address the court on that issue before the case is removed from the adjudicative process. Before any formal or informal action is taken, the prosecutor shall give the victim notice of the time and place of the hearing on the proposed removal of the case from the adjudicative process. The victim has the right to attend the hearing and to address the court at the hearing. As part of any other order removing any case from the adjudicative process, the court shall order the juvenile or the juvenile’s parents to provide full restitution as provided in [MCL 780.794].”

*MCR
3.932(C)(3)
permits a victim
to be present
during a
consent
calendar
conference.

If a well-pleaded petition alleges that the juvenile committed a criminal offense that brings the case under the juvenile article of the CVRA, the court must give written notice to the prosecuting attorney and allow him or her to address the court on the issue before removing the case from the adjudicative process. The prosecuting attorney, in turn, must notify the victim of the time and place of a hearing on the issue. Neither formal nor informal procedures may be used until the prosecutor notifies the victim. The victim has the right to attend a hearing and address the court on the issue.* If the requirements of MCL 780.794 are met, the court must order restitution in conjunction with the use of any informal procedure. Note that restitution must be ordered for any offense that would be a criminal offense if committed by an adult. MCL 780.794(1)(a). Thus, if the alleged offense is not a felony or serious misdemeanor, the court must order restitution in conjunction with an informal procedure even though the court is not otherwise required to comply with MCL 780.786b(1). Restitution is discussed in detail in Chapter 10.

These procedures are required when the court intends to utilize juvenile diversion, the consent calendar, or “any other prepetition or preadjudication procedure that removes the case from the adjudicative process” MCL 780.786b(1). The court may “take a plea of admission or no contest under advisement” pursuant to MCR 3.941(D) and later dismiss the case if the juvenile complies with the court’s directives. See, for example, *In the Matter of Raphael Hastie*, unpublished opinion of the Court of Appeals, decided March 28, 2000 (Docket No. 213880) (a plea taken under advisement in a first-degree criminal sexual conduct case was later properly

accepted by the court where the juvenile did not successfully complete therapy) and *In re JS & SM*, 231 Mich App 92, 95 (1998), overruled on other grounds 462 Mich 341, 353 (2000).

E. The Victim’s Right to Consult With the Prosecuting Attorney Prior to a Plea Agreement or Informal Disposition

The CVRA gives victims of juvenile offenses certain rights to consult with the prosecuting attorney prior to reducing the original charge. MCL 780.786(4) states:

“If the juvenile has not already entered a plea of admission or no contest to the original charge at the preliminary hearing, the prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the victim’s views about the disposition of the offense, including the victim’s views about dismissal, waiver, and pretrial diversion programs, before finalizing any agreement to reduce the original charge.”

As indicated in this statute, if the juvenile does not enter a plea to the offense charged at the preliminary hearing, the prosecuting attorney must offer the victim an opportunity to consult with him or her “before finalizing any agreement to reduce the original charge.”

MCL 780.786b(2) provides a similar right of consultation prior to disposition of the case through an informal procedure. That section states:

“Before finalizing any informal disposition, preadjudication, or expedited procedure, the prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about that manner of disposing of the case.”

4.4 Requirements of the Juvenile Diversion Act

Under MCL 712A.2(e), the Family Division has the authority to establish or assist in developing a program or programs within the county to prevent delinquency and provide services to act upon reports submitted to the court relative to juveniles who do not require formal court jurisdiction but otherwise fall within the jurisdictional requirements of MCL 712A.2(a). Such services can be used only if they are voluntarily accepted by the juvenile and his or her parents, guardian, or custodian. The requirements of the Juvenile Diversion Act must be complied with if the court utilizes such services. MCL 712A.11(7).

The purpose of the Juvenile Diversion Act is to permit certain minors to be diverted from the court system having jurisdiction over minors, to establish procedures for diversion from formal court procedures, and to require that certain records be kept in connection with diversion. The recordkeeping requirements help ensure that diversion procedures are not abused by the juveniles taking part in them. House Legislative Analysis, HB 4597, December 10, 1987. A juvenile who does not comply with the terms of a diversion agreement may be subject to court jurisdiction. MCL 722.825(5).

For purposes of the act, a minor is an individual less than 17 years of age. MCL 722.822(e).

“Diversion” is defined as the placement that occurs when a formally recorded apprehension is made by a law enforcement agency for an act by a minor which, if a petition were filed with the court, would bring the minor within the formal jurisdiction of the court under MCL 712A.2(a). MCL 722.822(c). Instead of a petition being filed or authorized, however, either of the following occurs:

“(i) the minor is released into the custody of his or her parent, guardian, or custodian and the investigation is discontinued, or

“(ii) the minor and the minor’s parent, guardian, or custodian agree to work with a person or public or private organization or agency that will assist the minor and the minor’s family in resolving the problem that initiated the investigation.” MCL 722.822(c)(i)–(ii) and MCL 722.823(1)(a)–(b).

The Juvenile Diversion Act may be used by law enforcement officials and court intake workers prior to the filing of a petition or before the court authorizes a petition. MCL 722.823(1), MCR 3.932(A)(2), and MCR 3.935(B)(3). However, once a petition is authorized, the act may no longer be used: the case must be placed on the formal calendar.

A. Offenses Precluding the Use of Diversion

Juveniles accused of or charged with any of the following “assaultive offenses” shall not be diverted:

- felonious assault, violation in weapon-free school zone, MCL 750.82;
- assault with intent to murder, MCL 750.83;
- assault with intent to do great bodily harm less than murder, MCL 750.84;
- assault with intent to maim, MCL 750.86;

- assault with intent to commit a felony, MCL 750.87;
- assault with intent to rob while unarmed, MCL 750.88;
- assault with intent to rob while armed, MCL 750.89;
- first-degree murder, MCL 750.316;
- second-degree murder, MCL 750.317;
- manslaughter, MCL 750.321;
- kidnapping, MCL 750.349;
- prisoner taking another prisoner as hostage, MCL 750.349a;
- kidnapping, child under 14, MCL 750.350;
- mayhem, MCL 750.397;
- first-degree criminal sexual conduct, MCL 750.520b;
- second-degree criminal sexual conduct, MCL 750.520c;
- third-degree criminal sexual conduct, MCL 750.520d;
- fourth-degree criminal sexual conduct, MCL 750.520e;
- assault with intent to commit criminal sexual conduct, MCL 750.520g;
- armed robbery, MCL 750.529;
- carjacking, MCL 750.529a; and
- unarmed robbery, MCL 750.530.

MCL 722.823(3) and MCL 722.822(a).

B. Factors to Determine Whether to Divert a Juvenile

Before a minor is diverted, all of the following factors must be evaluated:

“(a) The nature of the alleged offense.

“(b) The minor’s age.

“(c) The nature of the problem that led to the alleged offense.

“(d) The minor’s character and conduct.

“(e) The minor’s behavior in school, family, and group settings.

“(f) Any prior diversion decisions made concerning the minor and the nature of the minor’s compliance with the diversion agreement.” MCL 722.824(a)–(f).

C. Diversion Conference

If the decision is made to divert the minor with a referral to a person or private or public organization or agency, a conference must first be held with the minor and the minor's parent, guardian, or custodian to consider alternatives to the filing of a petition with the court or to the authorization of a petition. MCL 722.825(1). The law enforcement official or court intake worker—depending upon who is holding the conference—must notify the minor and the minor's parent, guardian, or custodian of the time and place of the proposed conference and:

“(a) That participation in the conference or resulting referral plan is voluntary.

“(b) That an attorney may accompany the minor and the minor's parent, guardian, or custodian at the conference.

“(c) The alternative referral programs available and the criteria utilized to determine whether to file a petition with the court or to dispose of the petition with a referral.

“(d) That if diversion is agreed to and the minor complies with the terms of the diversion agreement and the referral plan, a petition cannot be filed with the court, or if a petition has been filed, the petition cannot be authorized.” MCL 722.825(1)(a)–(d).

This conference may not be held until after the questioning, if any, of the minor has been completed or after an investigation has been made concerning the alleged offense. Mention of, or promises concerning, diversion shall not be made by a law enforcement official or court intake worker in the presence of the minor or the minor's parent, guardian, or custodian during any questioning of the minor. Information divulged by the minor during the conference or after the diversion is agreed to, but before a petition is filed with or authorized by the court, cannot be used against the minor. MCL 722.825(2).

D. Diversion Agreement

If a diversion agreement is reached that imposes conditions on the minor, the terms of the agreement must be set forth in writing, dated, and signed by the law enforcement official or court intake worker, the minor, and the minor's parent, guardian, or custodian. MCL 722.825(3).

If a conference is held but an agreement is not reached, a petition may be filed with the court as provided by law and a petition may be authorized as provided by law. If the law enforcement official or court intake worker

decides to file a petition, it must be filed no later than 30 days after the conference. MCL 722.825(4).

E. Revocation of Diversion Agreement

If the minor complies with the terms of the diversion agreement and the referral plan, a petition cannot be filed with the court, or if a petition has been filed, the petition cannot be authorized by the court. MCL 722.825(1)(d).

However, “[i]f the minor fails to comply with the terms of the diversion agreement and the referral plan, the law enforcement official or court intake worker may revoke the diversion agreement. If the diversion agreement is revoked, a petition may be filed with the court as provided by law and a petition may be authorized by the court as provided by law.” MCL 722.825(5).

F. Required Information

Whenever a law enforcement official or court intake worker diverts a minor, the following information must be filed with the Family Division in the county in which the minor resides or is found:*

“(a) The minor’s name, address, and date of birth.

“(b) The act or offense for which the minor was apprehended.

“(c) The date and place of the act or offense for which the minor was apprehended.

“(d) The diversion decision made, whether referred or released.

“(e) The nature of the minor’s compliance with the diversion agreement.” MCL 722.826(1)(a)–(e).

If a diversion agreement is revoked, the law enforcement official or court intake worker must file with the court in which the information described above is filed the fact of and reasons for the revocation. MCL 722.826(2).

*See Sections 25.5–25.6 for discussion of the confidentiality and destruction of diversion records.

4.5 Consent Calendar

The term “consent calendar” is not defined in MCR 3.903, the court rule which contains the definitions applicable to juvenile proceedings. It is a procedural mechanism provided by court rule that allows for informal treatment of appropriate cases. If the court, juvenile, and the juvenile’s

parent, guardian, or legal custodian agree to place the case on the court's consent calendar, the juvenile waives certain rights, including:

- formal notice of charges;
- the right to an appointment of an attorney at public expense;
- the right to jury trial;
- the right to a trial before a judge;
- the presumption of innocence;
- the presentation of proof beyond a reasonable doubt;
- the right to testify on the juvenile's own behalf;
- the privilege against self-incrimination (and the right to remain silent);
- the right to present witnesses;
- the right to confront and cross-examine the juvenile's accusers; and
- the right to use the subpoena power of the court to compel attendance of witnesses.

See MCR 3.932(C)(1), 3.935(B)(4)(a)–(c), and 3.942(C), for a list of rights of a juvenile when his or her case is placed on the formal calendar.

MCR 3.932(C) provides the rules governing the consent calendar. That rule states:

“(C) Consent Calendar. If the court receives a petition, citation, or appearance ticket and it appears that protective and supportive action by the court will serve the best interests of the juvenile and the public, the court may proceed on the consent calendar without authorizing a petition to be filed. No case may be placed on the consent calendar unless the juvenile and the parent, guardian, or legal custodian agrees to have the case placed on the consent calendar. The court may transfer a case from the formal calendar to the consent calendar at any time before disposition.

(1) **Notice.** Formal notice is not required for cases placed on the consent calendar except as required by article 2 of the Crime Victim's Rights Act, MCL 780.781 *et seq.**

*See Section 4.3(D), above for discussion of notice requirements under the CVRA.

(2) **Plea; Adjudication.** No formal plea may be entered in a consent calendar case, and the court must not enter an adjudication.

(3) **Conference.** The court shall conduct a consent calendar conference with the juvenile and parent, guardian, or legal custodian to discuss the allegations. The victim may, but need not, be present.

(4) **Case Plan.** If it appears to the court that the juvenile has engaged in conduct that would subject the juvenile to the jurisdiction of the court, the court may issue a written consent calendar case plan.

(5) **Custody.** A consent calendar case plan must not contain a provision removing the juvenile from the custody of the parent, guardian, or legal custodian.

(6) **Disposition.** No order of disposition may be entered by the court in a case placed on the consent calendar.

(7) **Closure.** Upon successful completion by the juvenile of the consent calendar case plan, the court shall close the case and may destroy all records of the proceeding. No report or abstract may be made to any other agency nor may the court require the juvenile to be fingerprinted for a case completed and closed on the consent calendar.*

(8) **Transfer to Formal Calendar.** If it appears to the court at any time that the proceeding on the consent calendar is not in the best interest of either the juvenile or the public, the court may, without hearing, transfer the case from the consent calendar to the formal calendar on the charges contained in the original petition, citation, or appearance ticket. Statements made by the juvenile during the proceeding on the consent calendar may not be used against the juvenile at a trial on the formal calendar on the same charge.”

*Record-keeping requirements for cases on the consent calendar are discussed in Section 25.6.

If the case is transferred to the formal calendar, however, the court must inform the juvenile of his or her right to an attorney, to trial by judge or jury, and that any statement made by the juvenile may be used against him or her. See *In re Chapel*, 134 Mich App 308, 312–13 (1984) (full panoply of rights under court rules vests when case is placed on formal calendar). Statements made by the juvenile during consent calendar proceedings may not be used

at a trial on the formal calendar that is based on the same charge. MCR 3.932(C)(8).

4.6 Formal Calendar

MCR 3.903(A)(10) defines formal calendar as “judicial proceedings other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing of a delinquency proceeding”

*See Section 5.7 for a more detailed discussion of a juvenile’s right to counsel.

The court may authorize a petition to be filed and docketed on the formal calendar if it appears that formal court action is in the best interest of the juvenile and the public. MCR 3.932(D). The court shall not authorize a delinquency petition, however, unless the prosecuting attorney has approved submitting the petition to the court. MCR 3.932(D) and MCL 712A.11(2). The juvenile must be advised of his right to counsel when the court is proceeding on the formal calendar. MCL 712A.17c(2) and MCR 3.915(A)(1).*

“At any time before disposition, the court may transfer the matter to the consent calendar.” MCR 3.932(D).